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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,946	04/22/2005	Jeffrey Scott Callander	259749US6PCT	4981
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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER NELSON JR, MILTON	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/509,946	Applicant(s) CALLANDER, JEFFREY SCOTT	
	Examiner Milton Nelson, Jr.	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 5-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 5 is contradictory because Applicant a "curved" surface composed of a plurality of "plane" surfaces. The surfaces are planar (i.e. without curved surfaces). The surface is curved (i.e. with straight surfaces). Claiming the surfaces as curved and planar is not geometrically accurate. Similarly note claim 6. In claim 7, Applicant claims the curved surface as being parallel to the plane upon which the bench can be placed. It is unclear how a curved surface can be parallel to a plane surface. Clarification is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 3-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 3 to 4 of claim 1, Applicant claims the "dimensions of the bench are adapted to a size of the user who is supposed to lie supine thereon". Applicant appears to define the dimensions of the invention relative to the user, whose dimensions are infinitely variable. As such, the metes and bounds of the claim cannot be ascertained. Similarly note lines 14 to 15 of claim 1, wherein Applicant claims "the height of the supporting member is adapted to the size of the user". In claim 7, it is unclear if Applicant intends to positively claim the "plane" on which the bench can be put. Note that in claim 1, Applicant sets forth the supporting member "for supporting the resting member on a plane on which the bench can be put" (see lines 8 to 9 of claim 1). This appears to set forth the plane as merely an environment with which the invention can be used. In claim 7, Applicant sets forth the surface of the invention as "oriented substantially parallel to the plane at the second end thereof". This appears to set forth the bench in combination with the plane, which substantially contradicts claim 1. Clarification in the claim language is required. Additionally, the plane represents an infinite variable. Since the bench can be used on all sorts of planes (e.g. of different inclinations), describing the invention relative to this variable renders the metes and bounds of the claims as unascertainable. Claims 3-6 and 8 are indefinite since each depends from an indefinite claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-8, as best understood with the above cited indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Zaboy (2738975). Note the resting member (10, 12, 24, 25), supporting member (21), first area (24 or 25, as shown in Figure 3), second area (other of 24 or 25, as shown in Figure 3), wherein one of 24 or 25 has a higher coefficient of friction than the other since based on the differences in the types of materials used, lack of concentration tones which could strain joints or ligaments, curved surfaces (see Figures 1 and 3), plane surfaces (16, 28, 30), and convex surface (see Figure 1).

Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Shanley (4103681). Note the resting member (14), first and second portions (see Figure 2), and supporting member (12).

Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Taltre (4927139). Note the resting member (32), first and second portions (see Figure 5), and supporting member (12, 13, 26, 16, 18, 20, 22, 24).

Response to Amendment/Arguments

Applicant's response filed November 8, 2004 has been fully considered.

Remaining issues are described in the above sections. Regarding claim 1, Applicant argues that Zaboy does not disclose or suggest a supporting member having a height relative to a plane on which the bench is to be put which is chosen so that a user, if the user lies supine on the bench, can put his feet on the plane, while the user's knees are bent and at a higher position than the user's spine or back. Zaboy shows these features. Clearly there is a user who is capable of being oriented on the bench in the manner described above. Users are of an infinite number of shapes and sizes.

Patentable weight cannot be given to dimensions based on a user, wherein the user represents no part of the claimed invention. Applicant argues that Zaboy shows a bench on which the user lies supine with a flexible strap provided for engagement with the user's feet. Nothing bars the user from using the bench without the strap engaged. Applicant argues that the bench of Zaboy is for relaxation and exercise, and not for decompression. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. This is clearly the case with Zaboy. Applicant argues that the bench of Zaboy "may actually stress the back". Nothing in Zaboy indicates that the back is stressed during usage. The assembly of Zaboy is capable of being used in the same manner as the instant invention. Applicant argues that Zaboy does not allow the user to have their knees in a higher position than the spine. Figure 1 shows the knees of a user in a higher position than the spine.

Art Unit: 3636

Clearly a user with different dimensions is capable of using the bench of Zaboy with knees bent and feet placed on a planar force. Applicant argues that Zaboy does not disclose the height of the supporting member being adapted to the size of the user so that if the user lies on the bench with his head oriented to the first lower end and has his feet on the plan, the knees are bent and at a higher position than the user's spine or back relative to the plane. This argument is relevant only to the dimensions of a user, however the user represents no part of the claimed invention. There is a user who is capable, based on his/her dimensions of being oriented on the bench of Zaboy in the manner claimed and argued. Applicant should claim the invention based on its structure, as limitations based on the dimensions of the user are indefinite and carry no patentable weight. Regarding claim 9, note the new grounds of rejection based on the prior art. Arguments regarding application of Zaboy to claim 9 are now moot. All rejections are proper.

Conclusion

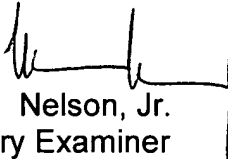
This Office action has not been made final since it includes a new grounds of rejection not necessitated by Applicant's amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is (571) 272-6861. The examiner can normally be reached on Monday-Wednesday, and alternate Fridays 5:30-3:00.

Art Unit: 3636

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn
January 18, 2006